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April 6, 2007

Tami R. Bogert, General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
Via facsimile (916) 327-6377

Re: Comments on Public Employment Relations Board Card Check Recognition Regulations

Dear Ms. Bogert:

I am writing on behalf of the California Conference Board of the Amalgamated Transit Union (ATU) and the California Conference of Machinists (IAM) to oppose the proposed regulations regarding card check recognition as currently drafted by the Public Employment Relations Board (Board) and to propose some amendments thereto.

I. Proposed Addition of Section 32705 – Revocation of Proof of Support As it Applies to HEERA or EERA

The regulations seek to add the concept of revocation to the HERRA and EERA card check process. We contend that the Board does not have the legal authority to make such change.

When the Legislature added the card check process to HEERA and EERA, it did not include protocols for revocation. In fact, nowhere in the statute does it provide for anyone other than the Union to submit proof of support. To allow individuals to submit "proof of support" in the form of revocations is to amend statute via regulation, which is beyond the authority of the Board.

While the Board recently recognized the concept of revocation under the Meyers-Milias-Brown Act, Government Code § 3500 et seq. in *Antelope Valley Health Care District*, PERB Decision 1816-M, 30 PERC 60 (2006), that decision is not applicable to the recognition procedures provided under HEERA or EERA. In fact, even under the *Antelope Valley* decision, there is no general right to revocation under the Meyers-Milias-Brown Act beyond the narrow factual circumstances of that case.

The proposed regulation, which would make any card voidable until it is counted, is contrary to the way the Board conducts elections under HEERA and EERA. Accordingly, the Board cannot and should not allow for revocation of authorization cards under either HEERA or EERA.

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II. Proposed Amendments to Sections 32700, 61020, 81020, and 91020 Regarding Proof of Support – Election Waiver Language

We also oppose those provisions of the proposed regulations contained in sections 32700, 61020, 81020, and 91020 which mandate that the proof of support submitted with a request or petition for recognition under a card check process "must also clearly demonstrate that the employee understands that an election may not be conducted."

The burden placed on the union by these proposed regulations is plainly an ideologically driven effort to defeat the card check process by creating a requirement that the union prove the subjective knowledge of a person signing an authorization card. This was not required by the statute and evidences a bias against the card check recognition system, which may represent the ideological bias of current Board members and staff, but does not happen to comport with the law. Legally and in practice card check recognition has been determined by the Legislature and the courts to be a fair, efficient and reliable way to allow employees to determine whether they want to be represented by a union.

Moreover the language not only contradicts the authorizing labor relations statutes, but also conflicts with the long standing policy enunciated by the US Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 584 (1969), holding that a bargaining order based upon a showing of majority support is appropriate, without an election so long as the authorization card unambiguously states that the signer is authorizing the organization to act for the signer as a collective bargaining agent.

Further, the regulations provide that proof of support can be demonstrated not only by authorization cards, but by dues deduction authorization forms, membership applications, or petitions signed by employees. The proposed language would be an inappropriate addition to a membership card or membership list or dues deduction card, which have nothing to do with elections but are statements of the employee's desire to be represented by the Union.

III. Proposed Amendments to Sections 32705, 61025, 81025 and 91025 Regarding Proof of Support – Revocation After Petition Has Been Filed

Sections 32705, 61025, 81025 and 91025 regarding revocation of proof of support would authorize revocations after a union's petition has been filed. This directly contravenes authorizing statutes and case law which provide that a union has obtained majority status at the time the union petitions for recognition. It is important to note that under existing law, recognition is obtained regardless of later revocations that may occur. Further, statutory law does not grant the employer or employees a safe harbor period after the union has petitioned for recognition for purposes of allowing post petition revocations to

impact recognition. To the contrary, both statutory and case law require employers to recognize unions upon showing proof of majority support.[1]

We are equally concerned that an unintended consequence of extending the time frame for revocations would provide an incentive for employers to pressure employees into revoking authorization cards or other proof of support.

Accordingly, the regulations should be amended to require that revocations be submitted on or before the date a union files its petition or request for recognition.

IV. Proposed Amendments to Sections 32705, 61025, 81025 and 91025 Regarding Proof of Support – No Requirement to Serve Union Revocations

We oppose subsections (b)(2) and (b)(4) of 32705, 61025, 81025 and 91025, which require service of revocation on the Board but no service is required to be made to the union.

Under federal law, revocations must be directed to the union in order to be valid. *J.P. Stevens & Co.*, 244 NLRB 407, 431 (1966.) If the union is not in receipt of a revocation, one wonders how the union is supposed to determine whether the revocation was valid, was coerced, or was in error. One also wonders how a union would be able to determine whether majority support was maintained and by whom. Implementation of the proposed regulations might lead to unions submitting recognition petitions to the Board, completely unaware that the majority of support upon which it was relying was in fact insufficient. Further, unions would be unable to effectively correct the situation because they would have no idea which employees had submitted revocations.

To remedy this problem (b)(2) and (b)(4) of 32705, 61025, 81025 and 91025 should be amended to require that revocation notice should be provided to the union as well as the Board.

For the above reasons, on behalf of ATU and the IAM we are strongly opposed to the proposed regulations and urge the Board to amend them to be consistent with the plain meaning of the law.

Sincerely,

Liberty R. Sanchez

[1] Gov. Code Sections 3501(c), 3544(a), 3544.1, 3573, 3574, 71636.3(c), 71823(a)(5). *See Antelope Valley Health Care District, ibid*, at page 11: "We find the statute to enunciate the clear requirement that the employer must grant recognition upon a showing of majority support."